



500.13 Eyewitness Identification Procedures

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POLICY

This policy establishes guidelines for the administration of eyewitness identification procedures in an effort to promote accurate and reliable identifications and to minimize a possibility of an erroneous identification. This policy applies to all agency law enforcement personnel. Nothing herein is intended to create new rights of parties or grant a right or privilege not otherwise provided by law. These Guidelines are consistent with the standards applicable to photographic and live lineups for Florida State and Local Law Enforcement Agencies in dealing with Photographic or Live Lineups in Eyewitness Identification as developed and endorsed by the Florida Sheriff's Association, the Florida Department of Law Enforcement, the Florida Police Chief's and the Florida Prosecuting Attorney's Associations on June 15, 2011.

PROCEDURE

- A. The guidelines set forth in this procedure shall be used when dealing with eyewitnesses in criminal investigations. Eyewitnesses play a vital role in solving crimes and, in some cases, the only evidence that may exist is the testimony of an eyewitness. It is the intent of the Hendry County Sheriff's Office to apply reliable procedures for eyewitness identification to ensure a reliable and accurate identification process.
- B. Show-up Procedures
 1. A show-up occurs when law enforcement officials show one suspect to one witness for the purpose of eyewitness identification within two hours of the incident. Courts recognize that show-up procedures can be suggestive, but acknowledge show-ups have benefits for both public safety and innocent suspects.
 2. In situations in which law enforcement lacks probable cause to arrest but have temporarily detained a suspect who matches a general eyewitness description, show-ups allow law enforcement to conduct an eyewitness identification procedure rather than simply releasing a potentially guilty perpetrator.
 3. Show-ups benefit innocent suspects because they have the potential to immediately clear an innocent person from suspicion without suffering the indignity of arrest or further investigation. This procedure normally takes place during the preliminary investigation by the Uniform Patrol Division.
 4. The following procedures are designed to address those risks and outline the proper use of show-ups. The procedures apply regardless of whether other practices would be legally permissible. For instance, even if a given suspect consents to a show-up, a show-up still should not be conducted unless the

investigating officer decides that the exigencies of the situation outweigh any possible risk of misidentification presented by conducting a show-up. Consent may legally authorize law enforcement to detain a suspect for a show-up, but it does nothing to remove the suggestiveness of the procedure.

- a. Before the show-up is conducted, obtain a detailed description of the perpetrator, from the witness. This description should be carefully documented.
 - b. Location of Suspect – Whenever practical, transport the victim/witness to the detained suspect (as opposed to transporting the suspect to the witness) to limit the potential legal impact of the suspect’s detention and to minimize the influence on the witness of seeing the suspect transported under custody.
 - c. Show-ups should **NOT** be conducted at the agency office or other law enforcement building or while the suspect is seated in a patrol vehicle.
5. Conducting the Showup – The investigating officer should verbally instruct the witnesses prior to the show-up. The law enforcement personnel transporting the witness will take all reasonable precautions to avoid giving any unintentional cues to the witness by either comment or action. The investigating officer will provide the following instructions to the witness:
 - a. You will be asked to view an individual.
 - b. The suspect may or may not be present.
 - c. You should not believe that you have to make identification.
 - d. Take as much time as you need.
 - e. The individual may not appear exactly as he/she did at the time of the incident because features such as clothing, or head and facial hair are subject to change.
 - f. It is just as important to exclude potentially innocent persons from suspicion as it is to identify the suspect.
 - g. The investigation will continue whether or not identification is made.
 - h. After viewing the individual, if you can make identification, please indicate the person you have identified.
 - i. Since this is an ongoing investigation, you should not discuss the results.
6. When multiple witnesses are involved, separate the witnesses and instruct them to avoid discussing details of the incident with other witnesses.
7. The investigating officer shall be reasonably positioned in a manner to avoid a direct line of sight by the witness as they view the show-up. This helps minimize the opportunity where an inadvertent action or reaction might influence the witness’s decision.
8. Present the Suspect - To minimize suggestiveness during a show-up, if possible and safe, do not show the suspect handcuffed, or in the back seat of a patrol vehicle. If the suspect is handcuffed, take measures to conceal this fact from the victim/witness when possible. Suspects may not be required to put on clothing worn by the offender. However, they may be asked but not required to speak words uttered by the offender, or perform other actions of the offender.
9. Avoid suggestive words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.
10. Question the Witness - After the witness views the suspect, ask the witness, “Do you recognize anyone?”

11. Documenting Procedures and Results

- a. Document that the investigating officer instructed the witness prior to observing the individual and the witness's responses to each question using the witness's own words and any non-verbal communications (e.g. crying upon viewing of a photo or person) of the witness.
 - b. The witness confidence level will be immediately assessed following the show-up identification. This information will be documented in a supplemental report.
 - c. Audio/video equipment should be utilized if available. If the witness identifies a suspect, the investigating officer will not provide the witness any feedback regarding the individual selected or comment on the outcome of the procedure in any way. After identification, a follow-up interview should assess any relevant factors that support the identification, such as: special facial features, hair, scars, marks, tattoos, etc.
 - d. Witness provides sworn statement or affidavit – Once the procedure is completed, have the witness provide a sworn statement or Witness Identification Form indicating who was identified; any additional descriptors should be included. Complete a supplement report detailing the date, time, location of show-up along with names of those present, the procedures used and results.
 - e. Photograph the suspect – Whenever possible, photograph the suspect at the time of the show-up.
12. Multiple witnesses – Show-ups should not be conducted with more than one witness present at a time. If there are multiple witnesses and one witness makes an identification during a show-up, that identification should provide probable cause for an arrest, and the remaining witnesses should ordinarily be shown a photo lineup rather than a show-up.
13. Multiple show-ups with same suspect and same witness – Avoid multiple identification procedures in which the same witness views the same suspect more than once. Should you decide to do more than one identification procedure, you are likely to be called upon to clarify and/or justify the action.
14. Multiple suspects – If there are two suspects, the witness should view two separate show-ups, each conducted in accordance with these procedures. Two or more suspects should not be shown to the witness at the same time.

C. Photo Array/Lineup Procedures

1. A photo lineup is the structured presentation of photographs for the purpose of an eyewitness to identify or eliminate the suspect as the perpetrator. The Simultaneous Photo Lineup Array is the Office of the State Attorney's and the Hendry County Sheriff's Office's elected method of conducting a lineup for suspect identification or elimination. The alternative method for administering photo line-ups is the sequential method. When creating, composing, and utilizing a photo lineup, the following procedures shall be followed:
 - a. A photo lineup or array shall consist of a minimum of six photographs. Include only one photo of the suspect and a minimum of five filler photos. A filler photo shall be used in the lead photo position. All photos used in a simultaneous photo array will be numbered.
 1. If there are multiple suspects in a case, only one suspect shall be included in each lineup and if multiple lineups are presented to a

witness due to multiple suspects, different filler photographs shall be used in each respective lineup.

2. If there are multiple eyewitnesses, the suspect's photo shall be placed in a different position in the array for each eyewitness.
3. All photographs used shall be of individuals who are reasonably similar in age and general appearance and are of the same gender and race, in accordance with the witness's description of the suspect.
4. All photographs used shall have the same background and be of the same size and basic composition.
 - a. No particular photo shall stand out in the array.
 - b. Do not mix color and black and white photos.
 - c. No identifying information shall appear on any photo.
 - d. The administrator shall view the lineup once it is completed to ensure that the suspect does not unduly stand out and appears only once in the lineup.

2. Conducting the Photo Lineup

- a. The photo array created shall be placed inside a folder that has a copy of the witness's instructions; the folder shall be closed when presented to the witness.
- b. The lineup must be conducted by an independent administrator. If not available, other alternative methods as outlined in Florida Statute 92.70 shall be used.
- c. The person administering the lineup shall be neutral and not know the suspect's identity; the closed folder will be placed before the witness. Prior to the witness opening the folder, the person administering the lineup shall read the instructions aloud to the witness and not engage in any additional commentary. The instructions are:
 1. You will be asked to view a group of photos of individuals.
 2. The suspect may or may not be in this photo array and the photos are not in any particular order.
 3. You should not believe that you have to make identification. If you do identify someone, I will note your exact comment regarding the identification.
 4. Take as much time as you need to look at each photograph.
 5. Individuals presented in these photographs may not appear exactly as they did on the date or time of the incident because features such as clothing, head and facial hair are subject to change.
 6. It is just as important to exclude innocent persons from suspicion as it is to identify the suspect.
 7. The investigation will continue whether or not identification is made.
 8. After viewing all the photographs, if you can make identification, please initial and date next to the photograph of the person you have identified and close the folder.
 9. After viewing all the photographs, if you cannot make a positive identification, you may, if you wish, inform me of any photograph that you believe most resembles the person you saw.

10. Since this is an ongoing investigation, you should not discuss this photo lineup or the results.
 11. In accordance with Florida Statute 92.70, the witness shall sign the Photo Lineup Instructions Acknowledgment form containing the aforementioned photo lineup instructions. The signed original shall be part of the photo lineup. A copy of this form shall be provided to the witness.
 12. Please open the folder and review the photo array.
- d. Whenever possible, the lineup presentation should be audio or video recorded.
 - e. Prior to beginning the review, the administrator shall ask the witness if they understand how the procedure will be conducted and if they have any questions.
 - f. Once the instructions have been read aloud and the witness begins the review, the administrator shall make no additional comment to ensure that the administrator scrupulously avoids giving any unintentional cues to the witness by either word or action that may directly or indirectly influence the witness's decision.
 - g. The administrator shall be reasonably positioned in a manner to avoid a direct line of sight by the witness as they view the lineup. This helps minimize the opportunity where an inadvertent action or reaction might influence the witness's decision.
 - h. After the witness has had an opportunity to view the photo lineup, the administrator will ask if they recognize anyone and if so, the circumstances from which the witness recognizes the individual.
 - i. If the witness identifies anyone in the lineup, the witness shall be asked to put their initials and date next to the photograph, indicating the individual they identified. If the witness refuses to sign the array, the person administering the lineup shall note the refusal and sign and date the array accordingly. Once the procedure is completed, have the witness provide a sworn statement or complete a Witness Identification Form, indicating who was identified.
 - j. The person administering the lineup shall not comment on selections or the outcome of the lineup. This helps minimize the opportunity for inadvertent behavior that may influence the witness's decision.
 - k. In the event of multiple eyewitnesses, show the photo array to only one witness at a time. Separate witnesses so they will not be aware of the responses of other witnesses.
 - l. Document the witness's response and exact words during the entire process. Note any non-verbal communications (e.g. crying upon viewing of a photo or person) of the witness.
 - m. At the conclusion of the process, the administrator shall inquire of the witness whether or not the witness observed any actions or heard any language during the presentation of the photo array which prompted them to make a specific selection or to select one photograph over any other.
 - n. For proper and accurate presentation in future court proceedings, the investigating officer shall document all lineup procedures in a supplement report, including the source of the photos used, the date and time the

lineup was conducted, the identities of the filler photographs used, the names of all persons present when the lineup was shown and any level of certainty expressed by the witness.

- o. If a witness makes a positive identification, the original lineup will be entered into evidence and a copy maintained with the case file. If positive identification was not made, the lineup will be maintained with the case file.
- p. The entire photo array, all forms utilized, together with the documentation about the process and outcome shall be maintained in the investigative case file.

D. Physical (Live) Lineup

- 1. The Hendry County Sheriff's Office does not conduct physical/live lineups. In the event that the need for a physical/live lineup would occur, all physical/live lineups will be conducted in accordance with instructions as identified by the FDLE Standards for State and Local Law Enforcement Agencies in Dealing with Photographic or Live Lineups in Eyewitness Identification; Legal Guidelines and Case Law, *U.S. v. Wade*, 388 U.S. 218 (1967).

E. Training

- 1. For initial implementation, training consists of sworn law enforcement members receiving the Policy/Procedure on PowerDMS where they will provide their electronic signature indicating they have read and understand the document.
- 2. Newly hired sworn members will receive initial training of this Policy/Procedure during their field training phase.
- 3. Periodic refresher training occurs any time the Policy/Procedure is reviewed/revised or at least once in a three-year period by receiving the updated document via electronic distribution in PowerDMS.
- 4. Sworn members will review and acknowledge that they understand the agency's policy regarding eyewitness identification by electronic signature.

DEFINITIONS

DISCERNING LEVEL OF CONFIDENCE: Any comment made by the witness during the entire process shall be carefully documented, word-for-word, to include any non-verbal communication or action.

FILLER PHOTO: A photograph of individual that resemble the suspect that are used to fill in a lineup. A minimum of five (5) fillers will be used with any simultaneous or sequential lineup. Individuals who are suspects in the same case may not be used as fillers.

LINEUP: A lineup is any procedure in which a witness to a crime or other incident is asked to identify a suspect from among a grouping of individuals.

LIVE LINEUP: Live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects. Live lineups may present the persons in the lineup simultaneously, or sequentially. Live lineups are sometimes called "physical lineups."

PHOTO ARRAY: The group of photographs utilized in a photographic lineup. A photo array may be presented to the witness simultaneously. The process of conducting a photographic lineup is often called the "photo array."

PHOTO LINEUP: A lineup in which a minimum of six photographs of individuals with similar features in order to eliminate or confirm the identity of the suspect arrested.

PHYSICAL LINEUP: A live lineup of individuals often used when a suspect has not been identified but may be in custody.

SHOW-UP: A single suspect viewed by a victim or witness immediately following the commission of a crime (within two hours) for the purpose of identifying or eliminating the suspect as the perpetrator.

REFERENCES

State/Federal Regulations:

Florida Statute 92.70

Davis v. State

Tumblin v. State

U.S. v. Wade

FDLE Standards for State and Local Law Enforcement Agencies in Dealing with
Photographic or Live Lineups in Eyewitness Identification

Guidelines for Florida State and Local Law Enforcement Agencies in dealing with
Photographic or Live Lineups in Eyewitness Identification as developed and endorsed on
June 15, 2011.

CFA:

CFA Standards 15.13M and 15.14M

Forms:

500.13-01 Photo Line-up Instructions Acknowledgement English

500.13-02 Photo Line-up Instructions Acknowledgement Spanish

Other Policy/ Procedure References:

None